

REMARKS

Introductory Comments:

Claims 6 and 10-14 are pending in the application and were examined in the Office Action dated 13 August 2001. In that Action, the Office has asserted the following claim rejections: (1) claims 10-12 and 14 stand rejected under the judicially created doctrine of obviousness-type double patenting over claim 1 of U.S. Patent No. 6,328,714 to Bellhouse et al. ("Bellhouse1") in view of U.S. Patent No. 5,630,796 to Bellhouse et al. ("Bellhouse2"); and (2) claims 6 and 13 stand rejected under 35 U.S.C. §102(b) as unpatentable over U.S. Patent No. 5,630,796 to Bellhouse et al. ("Bellhouse2"). Applicants respectfully traverse these claim rejections for the following reasons.

Matters of Form:

Applicants note that the previous Office Action (dated 13 August 2002) was addressed and sent to an incorrect correspondence address. In this regard, applicants have attached hereto copies of the Change of Correspondence Address form submitted in the instant case on 28 January 2002 and the confirmatory post card receipt showing receipt of the subject form at the USPTO on 20 February 2002. Applicants ask that the Office forward all further communications in the instant case to the new correspondence address as provided for in the Change of Correspondence Address form and that is repeated herein below (at the end of this instant communication) in order to avoid the potential for any mishandling of the prosecution papers in this case.

The Obviousness-Type Double Patenting Rejection:

Claims 10-12 and 14 stand rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 1 of Bellhouse1 in view of Bellhouse2. More particularly, the Office asserts “claim 1 discloses the replaceable cartridge for a needleless syringe and its limitations.” The Office then acknowledges that claim 1 of Bellhouse1 differs from applicants’ claims since the recited nozzle is missing. Office Action at page 2. However, the Office asserts that (referring to the figures of Bellhouse2) “the upper portion (with external threads) of the nozzle is wider than the rest of the nozzle, forming a projecting annular flange which provides an external shoulder. The cylindrical filter medium 39 surrounds the nozzle and rests upon the external shoulder [and] this nozzle is used with a replaceable gas cartridge.” Office Action at pages 2-3, bridging paragraph. The Office then concludes “it would have been obvious ... to have included the nozzle assembly of Bellhouse2 in claim 1 [of Bellhouse1] as an obvious inclusion of a missing element.” Office Action at page 3. Applicants respectfully traverse.

As best seen in figure 3 of Bellhouse2, read in light of the specification at column 12, lines 51-64, the Office’s characterization of the upper (threaded) portion of the nozzle forming an annular flange (shoulder) upon which the filter medium 39 rests is incorrect. As stated at column 12, lines 53-54, the cylindrical spacer 39 engages the nozzle 26 through the inter-engagement of elements 40 and 41 of the respective spacer 39 and nozzle 26. It is clear that the widened (threaded) top portion of the nozzle that the Office refers to does not in any way provide a rest for the cylindrical spacer 39. Accordingly, the specific elements of applicants’ claims cannot be found in claim 1 of Bellhouse1 when read in light of Bellhouse2.

Accordingly, with regard to claim 10, applicants note that the claim recites a reusable needleless syringe device containing, in operative combination, a nozzle, a

source of compressed gas and a particle container. Claim 1 of Bellhouse1 recites a replaceable cartridge formed from a housing that contains a particle source and a source of compressed gas. As demonstrated above, the nozzle element of Bellhouse2 would clearly not operate with the recited combination of elements in applicants' claim 10. Applicants thus submit that there is no proper reading of claim 1 of Bellhouse1, even in view of Bellhouse2, that would result in the recited device of claim 10. With regard to claims 11-12 and 14, each of these claims expressly recites a device containing a nozzle assembly with an external shoulder upon which rests a cylindrical filter medium. As demonstrated above, the nozzle element of Bellhouse2 does not meet this requirement.

Accordingly, claims 10-12 and 14 clearly distinguish over the Office's recited combination. For these reasons, then, reconsideration and withdrawal of the obviousness-type double patenting rejection over claim 1 of Bellhouse1 in view of Bellhouse2 is respectfully requested.

The Rejection under 35 U.S.C. §102(b):

Claims 6 and 13 stand rejected under 35 U.S.C. §102(b) as unpatentable over Bellhouse2. More particularly, the Office asserts that Bellhouse2 "discloses all the elements claimed." Office Action at page 3. In addition, the Office asserts that with respect to the upper portion of nozzle 26 (from Bellhouse2), "when a force is placed on the cylindrical filter medium, the force is also placed on the upper portion of the nozzle because the cylindrical filter is connected to it. Therefore the cylindrical filter medium rests on the upper portion of the nozzle." Office Action at page 3. Applicants respectfully traverse.

As established above, the cylindrical spacer 39 of Bellhouse2 engages the nozzle 26 through the inter-engagement of elements 40 and 41 of the respective spacer

39 and nozzle 26. These elements are at the lower end of the nozzle 26 (see figure 3 of Bellhouse2). It is thus clear that the widened (threaded) top portion of the nozzle that the Office refers to does not in any way provide a rest for the cylindrical spacer 39.

Anticipation of a claim under §102 *requires* that each and every element of the claims be inherent in, or disclosed expressly by the anticipating reference. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1057, 1064 (Fed. Cir. 1988). Exclusion of a single claimed element from a prior art reference is enough to negate anticipation by that reference. *Atlas Powder Co. v E.I. du Pont De Nemours & Co.* 224 USPQ 409, 411 (Fed. Cir. 1984). Further, anticipation basically requires identity with the prior art document (*Tyler Refrigeration v. Kysor Indus. Corp.*, 227 USPQ 845 (Fed. Cir. 1985)), where the identical invention must be shown in as complete detail as is contained in the rejected claim (*Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913 (Fed. Cir. 1989)). Finally, in order to anticipate, a prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public. *Akzo N.V. v. United States ITC*, 1 USPQ2d 1241 (Fed. Cir. 1986).

Bellhouse2 clearly fails to anticipate applicants' recited invention since it does not provide any disclosure whatsoever regarding applicants' recited combination of components, specifically, a nozzle assembly containing a nozzle with an outwardly projecting flange depending from its upstream end to provide an external shoulder and a filter medium that rests upon the external shoulder provided by the flange. Since Bellhouse2 does not disclose applicants' particular combination, it does not disclose each and every element of the claims as required under Section 102, and thus fails to anticipate applicants' invention.


For all of the foregoing reasons, then, the rejection of claims 6 and 13 under 35 U.S.C. §102(b) is improper. Reconsideration and withdrawal of the rejection is thus respectfully requested.

CONCLUSION

Applicants respectfully submit that the claims as now pending define an invention that is novel and nonobvious over the art. Accordingly, allowance is believed to be in order and an early notification to that effect is earnestly solicited. Applicants further ask that, should the Examiner note any minor remaining issues that may be resolved with a telephone call, that he contact the undersigned in the UK at +44 1865 332 600.

Respectfully submitted,

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DATE: January 28, 2002
Via First Class Mail

PAPER: Change of Correspondence Address (Application)

INVENTOR: BELLHOUSE

APPLICATION NO: 09/492,969

FILING DATE: 27 JANUARY 2000

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